

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

RODWELL H. SMITH, et al.,

Defendants and Appellants.

B242548

(Los Angeles County
Super. Ct. No. TA118603)

APPEAL from a judgment of the Superior Court of Los Angeles County, Arthur M. Lew, Judge. Affirmed.

Patricia Soung, under appointment by the Court of Appeal, for Defendant and Appellant Rodwell H. Smith.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Rodwell H. Smith was convicted of transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)¹), and possession of marijuana for sale (§ 11359). On appeal, appointed counsel for Smith filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436 requesting this court to conduct an independent review of the record to determine if there are any arguable issues. On January 23, 2012, we attempted to give written notice by mail to Smith, at the two addresses for him that were reflected in the record, to advise him that his counsel had failed to find any arguable issues and that Smith had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. Our written notices were returned to us as “not deliverable” and “unable to forward.” We contacted Smith’s counsel who advised us that he did not have an address for Smith other than the addresses we attempted to use to provide Smith with notice of the *Wende* proceedings. We then contacted the City of Pomona Probation Department and the Harbor Division of the Probation Department who advised us that they had an address for Smith that was outside of the State of California. We gave written notice by mail to Smith, at the address provide to us by the Probation Department, to advise him that his counsel had failed to find any arguable issues and that Smith had 10 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. Smith did not file a responsive brief or letter. We have reviewed the record and affirm the judgment as to Smith.

¹ All statutory citations are to the Health and Safety Code unless otherwise noted.

BACKGROUND

A. Factual Background

Los Angeles Police Department Officers Bryan Dameworth and Jesus Carrillo were in a patrol car when a vehicle suddenly turned and changed lanes in front of them, causing Officer Dameworth, who was driving, to brake. The officers initiated a traffic stop. Smith, the driver of the vehicle, exited it and Officer Dameworth directed him to go to the sidewalk.

Officer Carrillo testified that he approached the front passenger side of the vehicle, and the window was open. Officer Carrillo smelled a “strong pungent odor” of fresh, not burned, marijuana coming from the vehicle. Officer Carrillo asked co-defendant Nezhiah Ignatius Nesbeth,² who was in the front passenger seat of the vehicle, if he had been smoking marijuana, and Nesbeth responded, “Yes, sir, we both had been smoking marijuana.”³

Officer Dameworth testified that Officer Carrillo motioned to him that he smelled an odor of something in the vehicle. Officer Carrillo walked over to talk to Smith, and Officer Dameworth walked to the passenger side of the vehicle. Officer Dameworth smelled the odor of marijuana when he was about two or three feet from the vehicle. Officer Carrillo testified that Smith had an expired medical marijuana card.

Officer Dameworth testified that he opened the passenger door to the vehicle, smelled “a strong odor” of marijuana, and observed a blue trash bag in the center of the vehicle between the second row passenger seats. The blue trash bag contained four unwrapped bricks of marijuana totaling 16.8 pounds. Officer Dameworth testified that he did not find any marijuana smoking paraphernalia or rolling papers in the vehicle or on

² Nesbeth appealed, and we consider it in a separate opinion.

³ The trial court gave the jury a limiting instruction that the jury may consider Officer Carrillo’s testimony concerning this statement by Nesbeth only as to Nesbeth and not Smith.

the persons of Smith or Nesbeth. The officers testified that neither Smith nor Nesbeth showed any symptoms of being under the influence of marijuana.

Based on a hypothetical question closely tracking the facts introduced at the trial, Los Angeles Police Department Officer Darren Stauffer, the prosecution's expert witness, opined that individuals in the vehicle possessed and transported the marijuana for purpose of sale. Officer Stauffer opined, based on his experience, that people who transported drugs sometimes do it alone and sometimes in groups. The street value of marijuana ranged from \$1,000 to \$10,000 a pound, depending on the quality.

B. Procedural Background

The District Attorney of Los Angeles County filed an information jointly charging Smith and Nesbeth with possession of marijuana for sale in violation of section 11359 (count 1), and sale/offer to sell/transportation of marijuana in violation of section 11360, subdivision (a) (count 2). Following a trial, the jury found Smith guilty on both counts. The trial court sentenced Smith to 184 days in county jail and three years of formal probation, and imposed fines. Smith was credited with 184 days in actual custody credits.

DISCUSSION

We appointed counsel to represent Smith in this appeal. After examining the record, counsel filed an opening brief asking this court to independently review the record in accordance with *People v. Wende, supra*, 25 Cal.3d 436. On January 23, 2012, we attempted to give written notice by mail to Smith that counsel had failed to find any arguable issues and that Smith had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. Our written notices were returned to us as undeliverable, and Smith's counsel was unable to provide us with a different address to use to provide Smith with notice of the *Wende* proceedings. We then gave written notice by mail to Smith, at the address provide to us by the Probation Department, to advise him that his counsel had failed to find any

arguable issues and that Smith had 10 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. Smith did not submit a brief or letter. We have examined the entire record and are satisfied that Smith's counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.